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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,359	09/08/2003	Joan Adell Jones	10008.0081US01	9558

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EXAMINER	
MUROMOTO JR, ROBERT H	

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No.	Applicant(s)	
	10/657,359	JONES ET AL.	
	Examiner	Art Unit	
	Robert H. Muromoto, Jr.	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-20 and 33-45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 5-20 and 33-45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5, 6, 13, 14-16, 18-20, 33-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zucker US Patent 5,931,971.

Zucker teaches, "there is increasing governmental regulation in the field of cleaning **soiled rags** and **garments**..."

Zucker's invention is a fabric which is used in the form of a rag or other article (i.e. garment). The fabric may be knitted or woven using common techniques or **for reduced processing costs the preferred fabric form is as a non-woven**. The non-woven web can be constructed and consolidated in a variety of methods. Thermal point bonding, adhesive bonding, and hydroentanglement are suitable methods. The fabric comprises a majority of **PVA fibers having a dissolution temperature in water of about 180 degrees to 210 degrees F. (i.e., water-soluble)**. The basis weight of the fabric in most applications **will exceed 50 grams per square meter** and the fabric comprises in **excess of 55 percent PVA fibers** and preferably **in excess of 90 percent PVA**. The resulting fabric is cut into individual sheets. The articles are formed and employed in the normal fashion, and then the contaminated articles are collected for recycling. Following the separation step, the **fabric may be additionally washed**

and reused as long as the laundering temperature (80 to 130 degrees F) is below the degradation temperature of the non-woven fabric.

With respect to claim 20, the presence of lint and static is a result of the environment in which the fabric is present. There is no mention of the addition of lint or static to the fabric of Zucker and therefore the fabric is considered by the Examiner to be "substantially free of lint and static" as claimed.

These citations from Zucker clearly teach all of the structural limitations of the claims listed above. The only exception that the specific garment being constructed is a vest, with specific number of pockets, and specific shrinkage rate.

With respect to the vest limitation, a vest is simply a well-known species of the well-known genus of garments. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to construct any number of articles and garments, including vests, from the fabric material taught by Zucker for a desired particular end use or application.

With respect to a specific number of pockets, it is not considered an inventive step to include pockets on garments. The use of pockets on garments is a very well established and widely known practice. One only needs to look on their own person for evidence of the use of pockets on garments to provide the wearer with storage capability. Therefore it would have been obvious to one of ordinary skill in the art to use pockets on garments to provide the user with some storage capability.

As for a specific number of pockets and fabric shrinkage rate, the applicant shows no unexpected or critical results arising from the use of claimed specific number

of pockets in a vest or the specific fabric shrinkage rate, therefore one of ordinary skill in the art would be able to determine the optimum number of pockets and fabric shrinkage rate for a given application through routine experimentation.

The limitations of claims 16-18 are intended use claims. The recited intended uses would be provided by any garment with any number of pockets, as stated by applicant in current remarks dated 7/12/2006.

The "pre-washing" in claim 2, the "spun-laced" limitation in claim 14, 37, and 43, and the "pre-shrunk" limitation in claim 19 are all product-by-process limitations.

With respect to such limitations, "The Patent Office bears a lesser burden of proof in making out a case of prima facie obviousness for product-by-process claims because of their peculiar nature" than when a product is claimed in the conventional fashion. In re Fessmann, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983)"

"The lack of physical description in a product-by-process claim makes determination of the patentability of the claim more difficult, since in spite of the fact that the claim may recite only process limitations, it is the patentability of the product claimed and not of the recited process steps which must be established. We are therefore of the opinion that when the prior art discloses a product which reasonably appears to be

either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." In re Brown, 459 F.2d 531, 535,173 USPQ 685, 688 (CCPA 1972).

Since Zucker has been shown to teach all of the structural limitations of the instant invention the burden of proof has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product.

Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zucker in view of Langley US Patent 5,869,193.

Although Zucker teaches all of the limitations of the claimed invention, Zucker does not teach a closure system for the garment, that the garment has more than one non-woven sheet joined with fastening devices and the nature of the fastening devices.

However, Langley does teach a multi-layered material that uses heat sealing and adhesives to join non-woven laminated sheets of PVA (water soluble) and PVDC (water-dispersible) to form protective articles such as suits, gloves, and other garments.

Therefore it would have been obvious to one of ordinary skill in the art to modify Zucker to use adhesives to join separate sheets of material to form protective articles such as vests.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5-13, 15, 19, 20, 35, 36, and 40-42 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12, 14-18, 22, 25-27, and 30 of U.S. Patent No. 6,854,135. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant invention listed here contain all the same limitations of the patent claims listed with the exception that the garment produced in the patent is a coverall, while the garment in the instant claims is a vest. Coveralls and vests are well-known species of the genus of well-known garments. One of ordinary skill in the textile garment production arts would be able to determine the optimum type of garment to produce from a fabric for a particular end use. It would be an obvious variant to one of ordinary skill in the art of garment production to produce a vest rather than a coverall from a given fabric. The only modification in the process would be to not sew any sleeves or pants to the garment.

With respect to claim 19, the limitations are the same as patent claim 17 except that the shrinkage rate range is lowered to 5% rather than 10%. The applicant shows no unexpected or critical results arising from the use of claimed specific fabric shrinkage rate, therefore one of ordinary skill in the art would be able to determine the optimum fabric shrinkage rate for a given application through routine experimentation.

Claims 14, 33, 34, 37-39, and 43-45 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12, 14-18, 22, 25-27, and 30 of U.S. Patent No. 6,854,135in view of Zucker.

The patent claims listed teach all of the limitations of the instant claims as taught above but they do not teach the claimed basis weight or the claimed PVA percentage.

However, Zucker does teach a non-woven fabric for use in the removal of waste from industrial events that use fabrics with a basis weight of at least 50 grams per square meter to have the durability for use in waste collecting operations and PVA fiber percentage in excess of 55 percent and preferably in excess of 90 percent of the fabric. The PVA fiber providing the fabric with the ability to absorb contaminants and water-solubity of PVA fibers providing the unique ability to release the contaminant.

Therefore it would have been obvious to one of ordinary skill in the art to modify the fabric already taught in Zucker to construct garments such as vests to take advantage of the unique qualities of PVA fabrics.

Response to Arguments

Applicant's arguments filed 7/12/2006 have been fully considered but they are not persuasive. 112 rejections to claims 16-18 are dismissed. These claims are now

rejected by the art above since as applicant states in current remarks that these so-called, 'ice vests' and 'dosimetry vests' are simply vests with pockets.

The obviousness double patenting rejection remains. A vest is clearly an obvious variant to a coverall. In fact a vest would actually be present at some point in the construction of a coverall. As a vest is simply a garment for the upper torso without sleeves. Zucker is clearly applicable as it describes fabrics (woven, knitted and non-woven) from water soluble materials for use in cleaning rags and garments. Zucker is clearly within the same art and problem solving field as vests are a type of garment.

Applicant has not addressed the product-by-process limitations of the rejections above.

Zucker clearly teaches the use of multiple non-woven sheets cut and then formed into articles (see above). The combined Zucker and Langley teaches the fastening devices as claimed.

Applicant has incorrectly stated that Zucker does not teach non-woven fabrics only films. This argument is clearly incorrect. Cited lines take directly from Zucker above clearly teach non-woven fabrics.

Amendments made to claims with regards to the structure of vests are inherent to any vest by definition and do not add any consideration to the scope of the claims.

Since these are the only arguments and amendments presented the cited rejections remain and are considered to be proper.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H. Muromoto, Jr. whose telephone number is 571-272-4991. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bobby Muromoto
Patent examiner
9/26/2006